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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,158	03/16/2001	Padmanabhan Sreenivasan	499.057US1	5792

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EXAMINER

REFAI, RAMSEY

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 07/12/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/811,158

Applicant(s)

SREENIVASAN ET AL.

Examiner

Ramsey M Refai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

1. Claims 1-3 are presented for examination.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because

- a. reference character “12” in Figure 1 has been used to designate “server”, “CMS”, and “node”
- b. reference character “12” in Figure 2 has been used to designate “cluster node”, “machine”, “system”, and “server”
- c. reference character “10” in Figure 3 has been used to designate “system” and “cluster”
- d. reference character “12” in Figure 3 has been used to designate “cluster node”, “machines”, “system”, “nodes”, “servers”, and “server”
- e. reference characters “10”, “14” and “16” of Figure 3 as described in the specification are not in drawings

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

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and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Glenn, II et al (U.S. Patent No. 5,852,774).

4. As per claim 1, Glenn, II et al teach a high availability computing system comprising a plurality of servers (column 1, lines 49-50) connected by a first and a second network (column 2, line 53 and Figure 1, 114 and 116), wherein the servers communicate with each other to detect server failure and transfer applications to other servers on detecting server failure (column 1, lines 49-67; client applications transfer over to the second server).

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5. Claim 2 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Le et al (U.S. Patent No. 6,145,089).

6. As per claim 2, Le et al teach a method of maintaining high availability in a server cluster having a plurality of nodes, comprising:

instantiating a group communications service (column 2, lines 29 - 36), a cluster membership service (column 2, lines 29 - 36; can be membership with internet service) and a system resource manager on each node (column 4, lines 37-40) ; and

communicating between the group communications service, the membership service and the system resource manager on each node to detect node failures and to transfer applications to other nodes on detecting node failure (column 1, lines 33-45 and column 1, lines 61-67; control of the public network is transferred to the second server).

7. As per claim 3, it contains the similar limitations as claim 2, therefore is rejected under the same rationale.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ishida (U.S. Patent No. 5,526,492) shows a system for selecting server and switching server to another server when selected processor malfunctions based on priority order in connection request. Abramson et al (U.S. Patent No. 6,539,494) show an internet server session backup apparatus.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey M Refai whose telephone number is (703) 605-4361. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703) 305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ramsey M Refai
Examiner
Art Unit 2154

RMR
June 14, 2004

 JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100